



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

3

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/954,291	10/20/1997	CURTIS L. TAYLOR	3053-28781	5965

7590 01/31/2003

RICHARD A REZEK
BARNES AND THORNBURG
1313 MERCHANTS BANK BUILDING
11 S MERIDIAN STREET
INDIANAPOLIS, IN 46204

EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
----------	--------------

3743

DATE MAILED: 01/31/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/954,291

Applicant(s)

TAYLOR, CURTIS L.

Examiner

CARL D. PRICE

Art Unit

3743

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2-13-01, 4-23-01, 4-22-02, 07-17-02.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53, 66-68, 113, 114 and 116-122 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-53, 66-68, 113, 114 and 116-122 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 07 August 2000 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Art Unit: 3743

DETAILED ACTION

Reissue Applications

Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,458,291 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Original Patent

The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

Art Unit: 3743

Summary of Claims

Claims 69-110 have been canceled as directed by applicant in the paper filed on 02-13-2001.

Claims 54-65,111,112 and 115 have been canceled as directed by applicant in the paper filed on 04-23-2001.

New claims 121 and 122 were added in the response received on 04-23-2001.

Claims 1-53,66-68,113,114 and 116-122 are currently under examination.

Response to Arguments

Applicant's arguments with respect to claims 1-53,66-68,113,114 and 116-122 have been considered but are moot in view of the new ground(s) of rejection.

All of applicant's arguments and remarks filed in the responses received on 02-13-2001 (paper no. 9), 04-23-2001 (paper no. 12), 10-25-2001 (paper no. 14) and 07-17-2002 (paper no. 16) have been carefully reviewed and considered. Applicant's responses filed on 02-13-2001 (paper no. 9) and 04-23-2001 (paper no. 12) present applicant's central arguments regarding the rejection of the claims, mailed on 08-07-2000 (paper no. 8).

Defective Reissue Declaration

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

Art Unit: 3743

- ✓ 1) It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either on an application data sheet or supplemental oath or declaration.
- ✓ 2) Applicant has not given a mailing (post office) address anywhere in the application papers as required by 37 CFR 1.33(a), which was in effect at the time of filing of the oath or declaration. A statement over applicant's signature providing a complete post office address is required.
- ✓ 3) The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.
- 4) Applicant's original declaration properly points out at least one error to support the conclusion that applicant had claimed less than he had the right to claim. It is not clear however that there is now a proper error since applicant is now narrowing the claims rather than broadening. Applicant requests reconsideration of the examiner's objection to the reissue Declaration is noted. Applicant's attention is directed to 37 CFR 1.175 (b) and (c) reproduced hereinbelow.

M.P.E.P. 1414 Content of Reissue Oath/Declaration

37 CFR 1.175. Reissue oath or declaration.

- (a) The reissue oath or declaration in addition to complying with the requirements of § 1.63, must also state that:
 - (1) The applicant believes the original patent to be wholly or partly inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than the patentee had the right to claim in the patent, stating at least one error being relied upon as the basis for reissue; and
 - (2) All errors being corrected in the reissue application up to the time of filing of the oath or declaration under this paragraph arose without any deceptive intention on the part of the applicant.
- (b)
 - (1) For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant. Any supplemental oath or declaration required by this paragraph must be submitted before allowance and may be submitted:
 - (i) With any amendment prior to allowance; or
 - (ii) In order to overcome a rejection under 35 U.S.C. 251 made by the examiner where it is indicated that the submission of a supplemental oath or declaration as required by this paragraph will overcome the rejection.
 - (2) For any error sought to be corrected after allowance, a supplemental oath or declaration must accompany the requested correction stating that the error(s) to be corrected arose without any deceptive intention on the part of the applicant.
- (c) Having once stated an error upon which the reissue is based, as set forth in paragraph (a)(1), unless all errors previously stated in the oath or declaration are no longer being

Art Unit: 3743

corrected, a subsequent oath or declaration under paragraph (b) of this section need not specifically identify any other error or errors being corrected.

(d) The oath or declaration required by paragraph (a) of this section may be submitted under the provisions of § 1.53(f).

Defective Reissue Declaration: Claims 1-53,66-68,113,114,116-122 rejected

Claims 1-53,66-68,113,114,116-122 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

Alleged Improper Recapture Rejection

Applicant statement (paper no. 9) that "Claims 69-110 have been canceled without prejudice herein. The alleged improper recapture rejection relating to those claims is therefore moot." is noted by the examiner.

Applicant's Amendments to Avoid Prior Art

Applicant states that independent "Original claims 1,16,21 and 29 have been amended to avoid the applied prior art.". In particular, applicant explains that he "claims have been amended to explain that the first and second aperture means meter the supply of oxidant going to the burner and the means for discharging fuel has been referenced as being supported by the base wall of the oxygen supply housing.". Applicant argues that these are features not present in the prior art of record.

Art Unit: 3743

Applicant's attention is directed to the rejection of the claims hereinbelow which now relies on newly discovered prior art references which address the limitations of the amended claims.

Drawings

✓ The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 08-07-2000 has been approved by the examiner. **A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application.** The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 13, 66-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 is incomplete and indefinite, since there is no proper antecedent basis for "the nozzle". Since claims 66-68 depend from canceled claim 65, the scope of the claimed invention cannot be determined. And, consequently, these claims have not been treated on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3743

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12,14-33,37-51 and 53: rejected under 35 U.S.C. 103(a)

Claims 1-12,14-33,37-51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '227 (JP 52-14227) in view of JP '132 (JP 52-032132).

JP '227 shows and discloses a burner assembly combining oxygen and fuel to produce a flame and including a burner block (B) having a flame chamber (11) with an inlet opening and an outlet opening (14). JP '227 also includes a fuel nozzle extending through an oxygen supply housing (A) and through a first aperture (5a) in a base wall (not referenced). The base wall of JP '227 includes primary air metering means (e.g. – the small passages in block 10) for metering the flow of oxygen into the inlet of the burner block flame chamber. Additional secondary air openings (not referenced; see the oxygen flow represented by the larger arrows in chamber 7) in the base plate communicate with bypass passages (13) which direct air to the outlet opening (14) of the combustion chamber (11). JP '227 includes a frame (not referenced; having opening 16 therein) coupled between the base plate and the burner block. However, JP '227 does not disclose a metering means for metering the flow of oxygen through the second apertures in the base plate communicating with the bypass passage (13).

JP '132 teaches, from the same burner block type burner field of endeavor as JP '227, providing metering mean (12) in the base plate (not referenced) of a burner block (10; see figure

Art Unit: 3743

3) for restricting, or metering, the flow of air to and through oxygen bypass passages (11) of the burner block (10). JP '132 further teaches shaping the base wall to have a square shape (see figure 2).

In regard to claims 1-12,14-33,37-51 and 53, for the purpose of restricting, or metering, the flow of air to and through oxygen bypass passages of the burner block, it would have been obvious to a person having ordinary skill in the art to modify the secondary air base plate openings in JP '227 to include metering means, in view of the teaching of JP '132. In regard to claim 11, for example, since the shape of the burner base would depend on numerous design concerns such as the size and shape of a furnace wall opening into which the burner would be mounted, to shape the base as a rectangle can be viewed as nothing more than a mere matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record. In regard to claim 12, for example, JP '227 shows a collar (5) engaging the oxygen supply housing (7).

Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL

Art Unit: 3743

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Henry Bennett** can be reached on 703-308-0101. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Art Unit: 3743

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1148/0858.



CARL D. PRICE
Primary Examiner
Art Unit 3743

cp
January 23, 2003